IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8944 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANIBEN GOVINDBHAI W/O GOVINDBHAI KANABHAI

Versus

EMPLOYEES' STATE INSURANCE CORPORATION

Appearance:

MR DN TRIVEDI for Petitioners

MR SR SHAH for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 17/04/2000

ORAL JUDGEMENT

Rule. Service of rule is waived by Mr. S.R.Shah, the learned advocate appearing for the respondent corporation. On the facts and in the circumstances of the case, the matter is taken up for

final hearing today itself. The facts of the present petition, in short, are that the petitioner No.1 Maniben is the widow of deceased Govindbhai Kanabhai Makwana who was an insured person under the Employees' State Insurance Act,1948. Petitioner No.2 is the son of deceased Govindbhai Kanabhai Makwana. The petitioners filed ESI Application No. 7 of 1985 before the Employees' Insurance Court at Ahmedabad and claimed for dependent benefits for herself and also for her then minor son which application was allowed by the ESI Court vide its judgment and order dated 7.1.1992. The petitioners were, thereafter, intimated by the respondent by its letter dated 12/16th March, 1992 that they have accepted the verdict of the ESI Court given in the said ESI Application No. 7 of 1985 and in the same letter, the petitioner no. 1 was asked to submit Form No. 18 duly filled in and supported with original death certificate. In due compliance of the said letter, the petitioner No. 1 submitted the claim Form No. 18 accompanied by the original death certificate, on 1.4.1992. It is the grievance of the petitioners that, thereafter, till this date, the respondent No.1 has not complied with the order and judgment of the ESI Court though in letters, they have accepted the verdict of the Court. The ESI Court passed the said judgment and order on 7th January, 1992 against which the respondent had preferred review application no. 1 of 1994 for review of the order dated 7.1.1992 which was ultimately dismissed by the ESI Court on 2.4.1996. Against the decision of the review application dated 2nd April, 1996, the first appeal no. 1788 of 1996 has been filed by the Regional Director of the ESI Corporation before this Court and the said first appeal was also rejected summarily by this court vide order dated 14th August, 1997. Thus, now, no proceeding is pending against the said order passed by the ESI Court, either against the main order or the order passed in the review application or the against the orders passed in first appeal and yet, the orders passed by the ESI Court dated 7th January, 1992 has not so far been implemented by the ESI Corporation.

I have heard the learned advocates for the parties. Mr. Shah, the learned advocate appearing for the respondent ESI Corporation has submitted that rule 42 of the Bombay Employees Insurance Courts Rules, 1959 relates to execution. As per Rule 42(1) of the Rules, any person in whose favour anorder has been passed shall, within one year from thedateof the order, apply in Form 10 to the Court which made the order for its execution. Rule 42(2) provides that on such application being made, the court shall send the same together with the

necessaryrecord to a civil court of competent jurisdiction for the execution and such civil court shall have the same power in executing such order as if it had been passed by it. As per Rule 43 of the said rules, the civil court to which a decree is sent for execution shall certify to the court which passed it the factof such execution or where that court fails to execute the same and the circumstances attending such failure. Another contention raised Mr. Shah is that as per section 55A of the ESI Act, any decision awarding dependents' benefit under this Act may be reviewed at any time by the Corporation if it is satisfied by fresh evidence that the decision was given in consequence of non disclosure or misrepresentation by the claimant or any other person of a material fact [whether the non disclosure or misrepresentation was or was not fraudulent] or that the decision is no longer in accordance with this Act due to any birth or death or due to the marriage,re-marriage or cesser of infirmity of,or attainment of the age of eighteen years by a claimant. Thus, according to Mr. Shah, subject to the provisions of the ESI Act, the Corporation may, on such review as aforesaid, direct that the dependents'benefit be continued, increased,reduced or discontinued.

I have considered the submissions made by Mr. Shah. Availability of an alternative remedy of execution does not debar this Court from entertaining the petition. This Court can entertain the petition though there is an alternative remedy available to the petitioner under the provisions of the Act or the Rules framed thereunder. In case of Jagdish Chand and Labour Commissioner and Ors. reported in 1995 (2) LLJ page 410, the Punjab and Haryana High COurt has held in paragraph 13 of the judgment as under:

"Time has come when the people have started feeling that they have been let down by the two organs of the State and they look upon the Courts with a ray of hope. Common man's faith in the system of dispensation of justice still exists. However, failure of the Courts to undo injustice done to the citizen will shake the confidence of the people. The Courts will have to be more vigilant in the discharge of their duties to safeguard the legal and fundamental rights of the individual. Public authorities particularly the administrative authorities have developed an attitude of total insensitiveness towards the needs of the people. This has naturally compelled the people to look upon COurt for solace and

> redressalof injustice. No doubt, this has led to an immense increase in the volume of litigation but that should not threaten the Courts and there is no need to accept the specious argument or evolve methodologies to non suit those who are really aggrieved by the State action or arbitrariness of public authorities. The COurts have to guard themselves against the allegation of being protector of haves in the society. Denial of relief to the poor and small manon theground of availability of alternative remedy will not do any good to the society. "

Here, the facts are that the ESI Corporation is a Statutory Authority. The ESI Court has come to the conclusion on merits after hearing the ESI Corporation and passed the orders as aforesaid on 7.1.1992 in favour of the petitioners. The said orders were sought to be reviewed by the ESI Corporation before the ESI COurt by filing review application which was dismissed on 2nd April, 1996 and, therearfter, the first appeal no. 1788 of 1996 was also dismissed on 14th August, 1997 and thereafter also, at least three years' period has gone but the respondent has not complied with the orders passed by the ESI COurt on 7th January, 1992 though no proceedings are now pending and, therefore, in view of these facts, the contention that the petitioners should be directed to avail of an alternative remedy of execution cannot be accepted in light of the facts and circumstances of the present case. As regards the second contention, the powers of the ESI Court to review the dependents' benefit under section 55A of the ESI Act, Corporation cannot review the orders passed by the ESI COurt. There is a provision in the Act itself to grant dependents' benefits by the Corporation after scrutinizing the case of the dependents. SO, in case when the Corporation has decided to grant or not to grant such benefits, in that circumtances, the Corporation is empowered and authorized to review such decision as provided under section 55A of the Act. But, if the orders have been passed by the ESI Court after hearing the Corporation, then, the ESI Corporation has no power and/or authority to review the orders passed by the ESI Court. It has to accept the verdict and if it does not want to accept the same, it has to carry out the verdict before the higher forum by filing appropriate proceedings but it cannot review the order of the ESI Court as contended by Mr. Shah. In the instant case, the Corporation has initially filed an application for review of the orders passed by the ESI Court which was rejected and, thereafter, first appeal as aforesaid was filed

which also was rejected by this Court. I am, therefore, of the opinion that this provision relates to only those orders whereby the Corporation has taken decision to grant or not to grant the dependents' benefit and only in those circumstances, the ESI Corporation can review such orders which were passed by it. Therefore, section 55A is not available to the respondent herein for reviewing the orders passed by the ESI Court which has ultimately attained finality as per the decision of this Court against the orders passed by the ESI Court in review application in First Appeal No. 1788 of 1996 and, therefore, the main orders dated 7thJanuary,m 1992 has become final because there is no further proceedings and, therefore, in view of these peculiar facts, since more than eight years have gone after the first orders passed by the ESI COurt and yet the petitioners have remained without any fruits of the said orders, I am of the opinion that the respondent is required to be directed to comply with the orders dated 7th January, 1992 passed by the ESI Court in aforesaid ESI Application NO. 7 of 1985 within one month from the date of receiptof writ of this order. I am also of the opinion that the respondent is required to be directed to pay the said amount flowing from the orders dated 7th January, 1992 passed by the ESI Court with 12 % per annum from 15th August, 1997 till the actual payment is made to the petitioners. Respondent Corporation is accordingly directed to comply with the order passed by the ESI Court, Ahmedabad in ESI APplication No. 7 of 1985 dated 7thJanuary, 1992 within one month from the date of receipt of writof this order and to pay dependents' benefits to the petitioners with 12% interest from 15th August, 1997 till the actual payment is made to the petitioners. Rule is made absolute to the above extent with no orders as to costs. The office is directed to send writ forthwith to the respondent NO. 1 without any delay.

17.4.2000. (H.K.Rathod,J.)